

REMARKS

The Office Action mailed April 2, 2009 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Amendment to Claims 1, 12

Claims 1, 12 have been amended for improved clarity and grammatical accuracy. The amendment does not raise any issues beyond those already considered by the Examiner.

No amendment made is related to the statutory requirements of patentability unless expressly stated herein. No amendment is made for the purpose of narrowing the scope of any claim, unless Applicant argues herein that such amendment is made to distinguish over a particular identified reference or combination of references. Any remarks made herein with respect to a given claim or amendment is intended only in the context of that specific claim or amendment, and should not be applied to other claims, amendments or aspects of Applicant's invention.

Canceled Claims

Claim 18 has been canceled without prejudice or disclaimer of the subject matter contained therein.

Rejection(s) Under 35 U.S.C. §112, Second Paragraph

Claims 1, 12 & 18 stand rejected under 35 U.S.C. §112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 18 has been canceled. Claims 1 and 12 have been amended to address the Examiner's concerns as to the language regarding "levels," and "representative of the characteristics of the sample." Therefore, Applicants submit that claims 1 and 12 as amended are not indefinite under 35 U.S.C. §112.

Rejection(s) Under 35 U.S.C. §102

Claims 1-9 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by O'Lear et al (U.S. pat. no. 5,252,486). It will be appreciated that, according to the M.P.E.P., a

claim is anticipated under 35 U.S.C. §102 only if each and every claim element is found, either expressly or inherently described, in a single prior art reference.¹ O’Lear does not disclose a “reaction loop forming a transparent pipe with a length between about 0.5 cm and about 10 cm.” Rather, O’Lear does not disclose a transparent pipe, and teaches a reaction chamber 41 which is “a coil of tubing of sufficient length” (col. 12, ll. 55-60), of which 1,000 cm is given as an example (col. 10, ll. 39-55; col. 12, ll. 55-59). This coil is disposed in a “heater 39” (see Fig. 1). Measurement is performed by a colorimeter 69 which is downstream of the reaction chamber 41. Moreover, O’Lear operates in different manner to achieve a different result. For example, it uses a “reducing agent reagent 25” before and after the sample (col. 12, ll. 35-39, 45-47), which is not required by the present invention. In addition, the “regulator 13” or O’Leary (see col. 12, ll. 24-27) is not the same as, or used for the same purpose as, the “push-syringe” of the present claims. In O’Leary, the “regulator” has the purpose of maintaining pressure in the system. The “push-syringe”, as described in page 15, ll. 23-26 of the present Specification, is such that “when it is desired to obtain a dosage of acidity, the push-syringe 43 is actuated at a flow rate of the order of 10 to 1,000 mL . min⁻¹, and delivers a variable but rejectable amount of dye, typically of the order of 0.5 to 10 µL.”

The aforementioned reasons clearly indicate that all the elements of the present claims are not found within O’Lear, and withdrawal of the 35 U.S.C. §102 rejection based on O’Lear et al. is respectfully urged.

Rejection(s) Under 35 U.S.C. §103(a)

Claims 10 & 11 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over O’Lear et al. (U.S. pat. no. 5,252,486) in view of Pawliszyn (U.S. pat. no. 4,940,333). Claims 10-11 variously depend, directly or indirectly, from the base claim 1 addressed above. For the same reasons, claims 10 and 11 are not obvious in view of O’Lear or Pawliszyn. In addition, Pawliszyn fails to remedy the above-mentioned shortcomings of O’Lear with respect to the base claim 1.

Claims 12, 13, 17 & 18 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over O’Lear et al. (U.S. pat. no. 5,252,486). For the reasons discussed above with

¹ Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

regard to the § 102 rejection of claims 1-9 over O'Lear, all the elements of the claimed inventions are not found in O'Lear, and are not obvious in view of O'Lear.

Claims 1, 2, 9, 12 & 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pollema et al (U.S. pat. no. 5,849,592). However, Pollema does not disclose the claimed features of the reaction loop such as its length. See col. 4, ll. 44-54. In addition, Pollema does not disclose the use of a push-syringe.

Claims 13, 15, 17 & 18 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pollema et al (U.S. pat. no. 5,849,592) in view of Pawliszyn (U.S. pat. no. 4,940,333). For the reasons discussed above, all the elements of the present base claim 12 are not found in Pollema. In addition, Pawliszyn does not remedy the deficiency of Pollema.

Claims 14 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pollema et al (U.S. pat. no. 5,849,592) in view of Petro et al (U.S. pat. no. 4,940,333). For the reasons discussed above, all the elements of the present base claim 12 are not found in Pollema. In addition, Petro does not remedy the deficiency of Pollema.

Request for Entry of Amendment

Entry of this Amendment will place the Application in better condition for allowance, or at the least, narrow any issues for an appeal. Accordingly, entry of this Amendment is appropriate and is respectfully requested.

Conclusion

It is believed that this reply places the above-identified patent application into condition for allowance. Early favorable consideration of this reply is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-3557.

Respectfully submitted,
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Dated: 2 Sept. 2009

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